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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,076	12/22/2000	Wm. Troy Tack		9505

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EXAMINER

WESSMAN, ANDREW E

ART UNIT PAPER NUMBER

1742

DATE MAILED: 10/23/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/681,076

Applicant(s)

TACK ET AL.

Examiner

Andrew E Wessman

Art Unit

1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 22-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

1. Claims 1-21 have been cancelled and replaced with new claims 22-39.
2. In view of the newly submitted claims, the previous rejections and objections to the claims are withdrawn.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt, Jr. et al. (U.S. Patent No. 5,221,377).

Hunt, Jr. et al. teaches the invention substantially as claimed. Hunt, Jr. et al. teaches (see abstract) an aluminum alloy having 7.6 to 8.4 wt% zinc, 1.8 to 2.2 wt% magnesium, 2 to 2.6 wt% copper, and up to 0.5 wt% of at least one of zirconium, vanadium, and hafnium. Hunt, Jr. et al. also teaches the alloy having a yield strength of over 84 ksi, and also shows alloys having yield strength of over 90 ksi (see Table 4, cols. 13 and 14). Hunt, Jr. et al. then teaches forming the alloy using casting (col. 5, lines 42-43), and that the alloy may be formed using processes including extrusion, forging, and rolling (col. 5, lines 44-45). Hunt, Jr. et al. then also teaches (col. 5, line 53 to col. 6, line 16) solution heat treating, quenching, and artificial aging the alloy. Hunt, Jr. et al. also teaches (col. 5, lines 59-60). The alloys disclosed by Hunt, Jr. et al. (see

abstract) are primarily of the Al-Zn-Mg-Cu type, as in applicant's claimed invention of claims 33-39.

Hunt, Jr. et al. does not teach using the alloy to create lightweight alloy stock for manufacturing gun frames and gun components. However, this is considered an intended use for the alloy stock and is therefore given little patentable weight. It is known in the art to use aluminum alloys to make gun components, as shown in the previous office action reference to a Bushmaster Arms catalog (see paper No. 3, paragraph 9). One of ordinary skill in the aluminum processing art would be aware of disclosures such as that of Hunt, Jr. et al., which teaches substantially the same aluminum alloy and processing steps. The final product made by the processes has little bearing on the patentability of the claims, as the principles applied to forming all manner of products are based on the materials used and not the shape of the final product desired. Because the alloys of Hunt, Jr. et al. and the claimed invention utilize the same processing steps and the same alloy composition, one of ordinary skill in the art would have expected the alloys of Hunt, Jr. et al. to be functional in the gun components of the claimed invention.

Response to Arguments

5. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

In regards to the material submitted to show the commercial success of the present invention, the material has been considered but is not persuasive as to the patentability of the claims. The materials presented by applicant do not specifically

mention the invention, but simply show that aluminum-scandium alloys are being used with some success by Smith and Wesson. Applicant's claimed invention is of much broader scope than the aluminum-scandium alloys, and so applicant's arguments are not of the same scope as the claims. Furthermore, there is no further information about the aluminum-scandium alloys used by Smith and Wesson to show that they are indeed of the type of applicant's claimed invention. The materials presented and further information showing that the materials are solely directed towards the claimed invention should be submitted in the form of a declaration under 37 CFR 1.132 (see Manual of Patent Examining Procedure 716).

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew E Wessman whose telephone number is (703)305-3163. The examiner can normally be reached on Monday through Friday, 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (703)308-1146. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

AEW
October 18, 2002

ROY KING 
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700